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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,637	12/08/2003	Randy G. Cooper	P-US-JK-01470-A	4229
28268	7590	01/24/2008		
THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286			EXAMINER SELF, SHELLEY M	
			ART UNIT 3725	PAPER NUMBER
			MAIL DATE 01/24/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/730,637	Applicant(s) COOPER ET AL.	
	Examiner Shelley Self	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11, 14, 16-28, 30-34, 68, 69, 71 and 75-82 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 14, 16-28, 30-34, 68, 69, 71 and 75-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on December 19, 2006 has been considered but is ineffective to overcome the prior art reference.

### ***Election/Restrictions***

Claims 13 and 29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on December 19m 2006.

Applicant's election with traverse of Species C (clms. 1-9, 11, 14, 16-28, 30-34, 68, 69, 71, 75-82) in the reply filed on December 19, 2006 is acknowledged. The traversal is on the ground(s) that no serious burden to the Examiner exists to examine all of the claims. This is not found persuasive because the various embodiments of the claimed invention(s) have differing mechanical features resulting in an undue burden to the Examiner furthermore, the specifics of the differing mechanical features result in differing classification of the various embodiments. Such embodiments are separable and distinct.

The requirement is still deemed proper and is therefore made FINAL.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, *the member configured to clamp the*

*base about the motor housing* (clm. 1) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

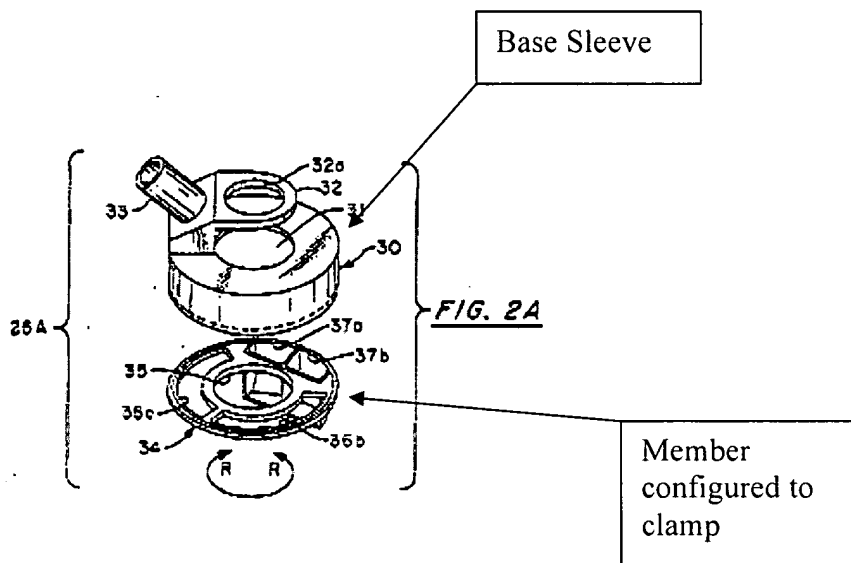
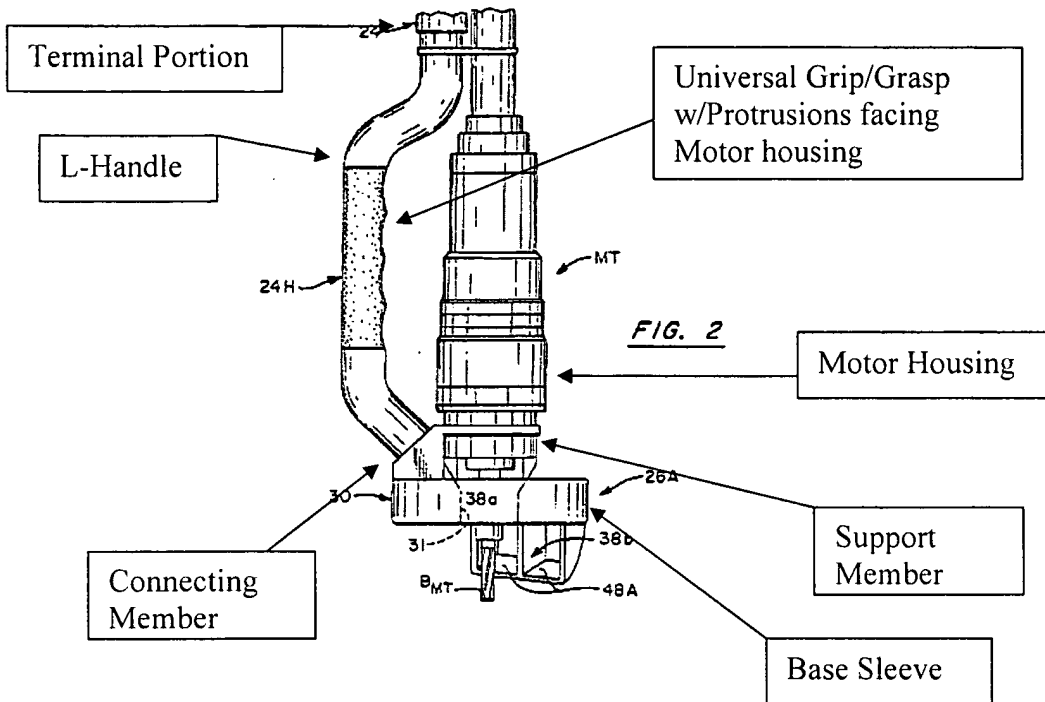
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 7, 16-20, 22, 23, 26, 28, 32-34, 68, 69, 71, 75, 76, 81 and 82 are rejected under 35 U.S.C. 102(b) as being anticipated by Gondar (5,667,565). With regard to claims 1, 19, 20, 26, 28, 81 and 82, Gondar discloses a power tool comprising a motor housing adapted to house a motor that is configured to drive a working tool (fig. 2); a cylindrical base sleeve (30) coupled to the motor housing (fig. 2), said base including a member (34) configured to clamp the base about the motor housing (Examiner notes the plate 34 of Gondar facilitates clamping/attaching of the base (30) about the motor housing fig. 2A) ; and a generally L-shaped handle (fig. 2) having a connection member coupled to the base (fig. 2) and a grasping member (fig. 2) wherein the handle defines a channel therethrough (col. 7, lines 4-5) with a terminal portion adapted to be attached to a vacuum source that is external to the power tool (col. 7, lines 1-8).

As it relates to the recitation, "...member configured to clamp the base about the motor housing..."Examiner notes the claim as written is silent to any structure as it relates to the member, further the recitation, "configured to" only requires an ability to so perform and does not impart any structural limitations within the claim. Therefore, because Gondar's plate (34) aids in the adherence, i.e., "clamping" of the base (30) about the housing, Gondar discloses the invention as claimed.



With regard to claim 2, the base (30) is removable from the motor housing (MT; fig. 2A).

With regard to claim 3, Gondar discloses wherein the base (30) includes a base sleeve (figs. 2, 2A); and a support member (32) connected to the base sleeve (fig. 2A), said support member for supporting the power tool (fig. 2), wherein the generally L-shaped handle is connected to the base sleeve adjacent the interface of the base sleeve and support member (fig. 2).

With regard to claim 4, Gondar discloses a universal grip coupled to the grasping member (fig. 2).

With regard to claims 6 and 22, Gondar discloses a generally oblong grip (fig. 2).

With regard to claims 7 and 23, Gondar discloses wherein the grasping member is substantially parallel to the motor housing (fig. 2).

With regard to claims 16-18 and 32-34, Gondar discloses the connecting member configured to support at least a portion of a human hand disposed between the motor housing and the grasping member and wherein the grasping member forms a back hand support for a user's hand when grasping at least a portion of the motor housing. Examiner notes that Gondar can perform such that an operator hand is adjacent the motor housing and the back of the hand is adjacent the grasping member.

With regard to claim 68, Gondar discloses the grasping member is at an angle to the motor housing (fig. 2).

With regard to claim 69, Gondar discloses wherein the grasping member and the connecting member are at a substantially right angle with one another (fig. 2).

With regard to claim 71, Gondar discloses wherein the grasping member and the connecting member are at an angle of less than 90 degrees to one another.

With regard to claim 75, Gondar discloses wherein the external vacuum source is not integral with the motor housing (fig. 2).

With regard to claim 76, Gondar disclose wherein the grasping member is disposed proximal the motor housing (fig. 2).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5, 11, 21 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gondar (5,667,565) in view of Yano (5,640,741). Gondar is silent to how the grip is affixed to the handle or the material of the grip.

The specific selection of a vibration dampening material as the grip would have been obvious to the skilled artisan because it is well within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious mechanical expedients.

Moreover, Yano teaches in a closely related art, the use of an oblong hand grip (fig. 2) frictionally coupled to a handle of a power tool and secured via fasteners (fig. 102a). Yano teaches this construction so as reduce the vibration felt by the operator of the power tool. Because Gondar and Yano are concerned with a similar problem. (i.e., manual operation of a power tool via a handle) it would have been obvious at the time of the invention to one having



ordinary skill in the art to provide Gondar with a frictionally secured handle grip or grip secured via fasteners so as to reduce vibration during operation felt by the operator as taught by Yano.

Claims 8, 9, 24, 25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gondar (5,667,565) in view of Lui et al. (6,506,006). Gondar does not explicitly disclose the L-shaped handle member to be removable. Examiner notes however that Gondar's use of separable components (fig. 2A) lends to removability or detachability.

Moreover, Lui teaches in a similar art, a router having a detachable handle (200) constructed of shell portions (230, 240) attached via fasteners (250). Lui teaches the use of a removable/detachable handle so as to facilitate easy access to other elements of the power tool/router. Because the references are from a similar art, it would have been obvious at the time of the invention to one having ordinary skill in the art to replace Gondar's handle connection with an easily removable/detachable connection so as to enable and facilitate ease of access to elements of the power tool/router as taught by Lui.

Claims 14 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gondar (5,667,565) in view of Williams et al. (6,266,850). Gondar does not disclose the grasping member to be adjustable positionable. Williams teaches in a similar art a router having generally L-shaped handles (fig. 2) attached to the router via a connecting member (fig. 3). Williams teaches the handles to have a grasping member, the grasping member to be adjustably positionable (figs. 4-5). Williams teaches this construction of adjustable grasping members so as to better orientate the router to facilitate proper contact with the work piece (col. 1, lines 20-40)

and for reduced risk of injury to an operator. Because the references are from a similar art, it would have been obvious at the time of the invention to one having ordinary skill in the art to replace Gondar's non-adjustable handles with adjustably positionable handles so as to allow consistent contact of the router with the work piece and reduce risk to an operator as taught by Williams.

Claims 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gondar (5,667,565) alone. Gondar does not disclose the grasping member is angled between  $0^{\circ}$  and  $20^{\circ}$  from an axis normal to the connecting member. However the specific selection of the optimum range of the connection angle of the grasping member relative to the connecting member is well within the general knowledge of the skilled artisan. Further such would result from routine engineering practices, accordingly it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Gondar such that the grasping member is angled between  $0^{\circ}$  and  $20^{\circ}$  from an axis normal to the connecting member. Examiner further notes Applicant's disclosure to be silent to any criticality to the angle being between  $0^{\circ}$  and  $20^{\circ}$  from an axis normal to the connecting member. In the absence of any positively recited criticality, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

### ***Response to Arguments***

Applicant's arguments filed December 19, 2006 have been carefully considered but they are not persuasive. Applicant's remarks are drawn to the failure of the prior art, Gondar to

disclose or fairly suggest a “base including a member configured to clamp the base about the motor housing”, as noted above with regard to claim 1, Gondar does disclose the feature.

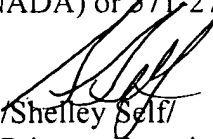
Accordingly the rejection in view of Gondar remains.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Shelley Self/  
Primary Examiner  
Art Unit 3725

January 7, 2008